

Subject: Fwd: ADM File No 2010-12

8/14/2011

1. In line 2 of subparagraph (E) of the proposed amended rule 2.512, "therefore" should be "therefor". The latter is a preposition, the former the introduction to a logical conclusion, and never the twain should meet.

2. The proposed rule represents bad public policy and also raises serious First Amendment difficulties. Jurors, attorneys, and everyone else have First Amendment rights to associate (after a trial), to make inquiries of one another, and to talk to one another or refuse to do so as they individually decide is in their interests or amenable to their feelings. For many years, it has been common in Michigan to instruct jurors after a verdict that they have no obligation to speak to anyone, but are free to do so if they wish.

Further, the rule is too broad by a mile--if there is a problem with the attorneys involved in a specific case badgering jurors, then formulate a suitably narrow rule to deal with the difficulty. As presented, the propose rule would bar attorneys from other cases, law professors conducting general research, parties to other cases, and their agents from ever speaking to anyone who served on a jury about their experience, or from attempting to ascertain what a broad cross-section of jurors found effective or annoying as courtroom tactics, argument, style, etc. In effect, the rule would grant an unfair monopoly advantage to currently experienced trial lawyers who have had years to gather such insights, leaving new lawyers and lawyers who might wish to become trial lawyers at a gross disadvantage, since they can never improve their skills by making inquiries of the people who count the most in evaluating their performance.

Also silly is that a lawyer called to jury service would be barred from discussing these topics with fellow jurors.

Accordingly, as presented this is a dubious idea that has been formulated as an extremely poorly conceived, unfair, and overly broad rule that, at best, attempts to swat a fly with an H-bomb, although there is no empirical evidence proffered to suggest there even is a fly.

Note that it would not be my ox being gored--I have no intention of doing jury trials, and I am a longstanding attorney who has occasionally inquired of acquaintances about their experience as jurors.

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